

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1477 (Wieckowski)
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Hearing Date: April 5, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Enforcement of judgments: wage garnishment

DIGEST

This bill reduces the amount by which a judgment debtor's wages can be garnished in order to satisfy a judgment, and eliminates a court's authorization to issue a bench warrant when a judgment debtor or third person fails to appear for a court-ordered examination to aid in execution of a judgment.

EXECUTIVE SUMMARY

In California, the Wage Garnishment Law (the WGL) authorizes a judgment creditor to seek garnishment of a judgment debtor's wages to satisfy a court judgment, wherein the employer withholds money from the debtor employee's paycheck and sends the money to the creditor. The WGL exempts certain portions of a judgment debtor's paycheck from wage garnishment, and sets a maximum amount of a judgment debtor's disposable income that may be garnished. Current law also authorizes a court to order a judgment debtor, or a third person believed to possess property of the judgment debtor subject to levy, to appear in court to answer questions to aid in the collection of the debt, and authorizes the court to issue a bench warrant for the arrest of the debtor of the person or commence contempt proceedings if they fail to appear.

This bill modifies the WGL's formula for what portion of a judgment debtor's wages may be garnished, with the net effect of reducing the maximum income that can be garnished per paycheck. The author has agreed to amend the bill to incrementally increase the amount of wages that can be garnished for incomes at and above the median level, so as to allow more garnishment from the wages of those better able to afford it. This bill also eliminates, when a debtor or a third person fails to appear for a court-ordered examination, the court's authorization to issue a bench warrant for the debtor's or person's arrest.

This bill is sponsored by the Center for Responsible Lending, the East Bay Community Law Center, the National Consumer Law Center, Public Counsel, the Public Law Center, and the Western Center on Law and Poverty, and supported by the California Low-Income Consumer Coalition, Californians for Economic Justice, Community Legal Services in East Palo Alto, the Consumer Federation of California, the Ella Baker Center for Human Rights, Freedom 4 Youth, the Greater Sacramento Urban League, Indivisible CA StateStrong, the Katharine & George Alexander Community Law Center, Santa Clara University, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Aid at Work, SEIU California, and United Way Bay Area. This bill is opposed by the California Association of Collectors, the California Bankers Association, the California Chamber of Commerce, the California Credit Union League, the California Financial Services Association, Encore Capital Group, PRA Group, and the Receivables Management Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that all property of a judgment debtor is subject to enforcement of a money judgment, unless specifically exempted from collection. (Code Civ. Proc., § 695.010.)
- 2) Provides statutory exemptions from collection in satisfaction of a money judgment. (Code Civ. Proc., pt. 2, tit. 9, div. 2, ch. 4, §§ 703.010 et seq.)
- 3) Establishes the Wage Garnishment Law, which sets forth procedures through which a judgment creditor can be paid via the garnishment of a judgment debtor's wages. (Code Civ. Proc., pt. 2, tit. 9, div. 2, ch. 5, §§ 706.010 et seq.)
- 4) Defines the following relevant terms for purposes of the WGL:
 - a) "Disposable earnings" is the portion of an individual's earnings that remains after deducting all amounts required by law.
 - b) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise. (Code Civ. Proc., § 706.011(a), (b).)
- 5) Requires an employer to garnish an employee's wages upon being served with an earnings withholding order; the employer must pay over all of the employee's wages for the pay period that are not exempt from garnishment. (Code Civ. Proc., § 706.022.)
- 6) Provides that the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order is the lesser of the following:

- a) Twenty-five percent of the individual's disposable earnings for that week; or
 - b) Fifty percent of the amount by which the individual's disposable earnings for that week exceed 40 times the minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a locality in which the local minimum wage is higher than the state minimum hourly wage, the local minimum hourly wage shall be used for this calculation. (Code Civ. Proc., § 706.050(a).)
- 7) Provides that, for purpose of calculating the maximum amount of disposable earnings subject to levy under an earnings withholding order when the judgment creditor is paid in a pay period other than a weekly pay period, the maximum amount shall be calculated proportionally to the calculation described above in 4)(b), as follows:
- a) For a daily period, the calculation is the same as in item 4).
 - b) For a biweekly period, multiply the applicable hourly minimum wage by 80 work hours.
 - c) For a semimonthly period, multiply the applicable hourly minimum wage by $86\frac{2}{3}$ work hours.
 - d) For a monthly pay period, multiply the applicable hourly minimum wage by $173\frac{1}{3}$ hours. (Code Civ. Proc., § 706.050(b).)
- 8) Requires a court, upon application from a judgment creditor, to issue an order requiring the judgment debtor to appear before the court or a court-appointed referee to furnish information to aid in enforcement of the money judgment, and requires the order to contain a notice to the judgment debtor stating that if the judgment debtor fails to appear, they may be subject to arrest and punishment for contempt of court and required to pay reasonable attorney fees incurred by the creditor. (Code Civ. Proc., § 708.110.)
- 9) Requires a court, upon an ex parte application from a judgment creditor who has satisfactory proof that a third person is in possession or care of property in which the judgment debtor has an interest or owes the judgment debtor more than \$250, to make an order directing the third person to appear before the court or a court-appointed referee to furnish information relating to the property or debt, and requires the order to contain a notice stating that if the third person fails to appear, they may be subject to arrest and punishment for contempt of court and required to pay reasonable attorney fees incurred by the creditor. (Code Civ. Proc., § 708.120.)
- 10) Authorizes the court-ordered examination of the debtor or third person as set forth above to be conducted by a referee appointed by the court, who is empowered to, among other things, issue a warrant for the arrest of a person who fails to appear pursuant to a court order. (Code Civ. Proc., § 708.140.)

- 11) Authorizes a court, if a judgment debtor or third person was properly served with an order to appear for an examination and failed to appear, to do either of the following:
- a) Pursuant to a warrant, have the person brought before the court to answer for the failure to appear, including, at the court's discretion, punishing the person for contempt; or
 - b) Issue a warrant for the arrest of the person who failed to appear as required by court order. (Code Civ. Proc., § 708.170(a).)

This bill:

- 1) Provides that the current maximum amounts of a judgment debtor's disposable earnings subject to levy under an earnings withholding order, and the formulas for calculating the maximum disposable earnings subject to levy, will sunset on January 1, 2023.
- 2) Establishes new maximum amounts of a judgment debtor's disposable earnings subject to levy under an earnings withholding order, to take effect January 1, 2023, when the judgment debtor is paid weekly, as the lesser of either:
 - a) Twenty-five percent of the individual's disposable earnings for the week; or
 - b) Ten percent of the amount by which the individual's disposable earnings for that week exceed 80 times the state minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum hourly wage shall be used for this calculation.
- 3) Establishes new formulas to determine the maximum amount of disposable earnings subject to levy under an earnings withholding order, to take effect January 1, 2023, when the judgment creditor is not paid weekly, as follows:
 - c) For a daily period, the calculation is the same as in item 2).
 - d) For a biweekly period, multiply the applicable hourly minimum wage by 160 work hours.
 - e) For a semimonthly period, multiply the applicable hourly minimum wage by $173\frac{1}{3}$ work hours.
 - f) For a monthly pay period, multiply the applicable hourly minimum wage by $346\frac{2}{3}$ hours.
- 12) Removes the court's, or court-appointed referee's, authorization to issue an arrest warrant when a judgment debtor or third person fails to appear in response to an order ordering them to appear before the court to provide information to aid in the enforcement of a money judgment, and removes the corresponding references to an arrest warrant in the notices provided to a judgment debtor or third person.

COMMENTS

1. Author's comment

According to the author:

The K-shaped nature of the economic impact of the pandemic, where the wealthy saw their wealth grow and those without means were pushed further towards the economic edge, has had a disproportionately negative effect on low-income families and communities of color. Family finances have been strained, making them more vulnerable to having debts in collection that can further destabilize their economic security. At the end of 2020, nearly one-third (28 percent) of Californians in communities of color and 17 percent of Californians in white communities had a debt in collection.¹ Wage garnishment, where creditors with a court order force an employer to send them a big chunk of a consumer's paycheck before they ever see it, is particularly harmful to low-income people as there is little or no leeway in their budgets. This means that a garnishment likely results in forgoing necessities like food, medicine, or rent. Increasing the amount of wages protected to a living wage and prohibiting the arrest of consumers who miss court dates for debt matters will help keep the most vulnerable California families above water.

2. This bill reduces the maximum amount of a judgment debtor's wages subject to garnishment

The WGL authorizes a judgment creditor to seek repayment of a debt by levying the judgment debtor's wages.² When the judgment creditor obtains an earnings withholding order and serves it on the employer, the employer must transmit all of the employee's wages not exempted from garnishment directly to the judgment creditor until the debt is satisfied.³ The amount required to satisfy the judgment, for purposes of ending wage garnishment, includes the outstanding judgment amount as well as the statutory fee for service of the order and any fees for performing duties under the order, any costs added to the order, and the daily interest accruing after issuance of the order.⁴

The primary exemption for wages otherwise subject to garnishment is the disposable earnings limitation.⁵ A judgment debtor's "disposable earnings" is all of their net wages that is not subject to some other exemption,⁶ such as where the debtor's wages are also

¹ Urban Institute, Debt in America: An Interactive Map (updated Mar. 31, 2021), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=6 (last visited Mar. 26, 2022).

² Code Civ. Proc., pt. 2, tit. 9, div. 2, ch. 5, §§ 706.010 et seq.

³ *Id.*, §§ 706.022, 706.027.

⁴ *Id.*, § 706.024.

⁵ *See id.*, § 706.050.

⁶ *Id.*, § 706.011(a).

subject to a levy for court-ordered child support.⁷ Because taking *all* of a judgment debtor's disposable earnings would leave them without funds to provide for basic necessities like food and shelter, the disposable income limitation sets a maximum amount of the debtor's disposable income that is subject to garnishment, based on an hourly-wage-based formula.⁸

Prior to 2012, the state used the federal maximum allowable garnishment amount on disposable earnings to set the state maximum.⁹ In 2012, the Legislature enacted AB 1775,¹⁰ which replaced the incorporation of federal law with a state formula and new maximum amounts of disposable earnings subject to levy. The formula and maximum amounts were modified again in 2015.¹¹

As put in place in 2015, the disposable earnings limitation is based on the hourly minimum wage in the state or, if the judgment debtor works in a locality with a higher minimum wage, the higher local minimum wage.¹² The judgment debtor's disposable earnings are currently the *lesser* of:

- Twenty-five percent of the individual's earnings for that week (i.e., twenty-five percent of their total wages minus any other exemptions from garnishment); or
- Fifty percent of the amount by which the individual's disposable earnings for the week (their entire weekly wages minus other exemptions) exceed 40 times the applicable hourly wage—in other words, fifty percent of what the individual earns over and above 40 hours of work paid at the prevailing minimum wage.¹³

The statute also provides the proper calculations for pay periods other than weekly, which result in proportional garnishment.¹⁴ Opponents of the bill argue that, in light of the negotiations involved surrounding the 2015 change, this bill is premature.

For an example of how the current maximum operates, the maximum for a person netting \$74,880 per year in wages and with no other exemptions would be calculated as follows:

- Calculate the person's weekly disposable earnings: \$74,880 divided by 52, or \$1,440 in disposable earnings per week.
- Calculate 40 hours of work at the state minimum wage of \$15 per hour: \$600.¹⁵

⁷ *Id.*, § 706.030.

⁸ *Id.*, § 706.050.

⁹ *See* 15 U.S.C. § 1673.

¹⁰ AB 1775 (Wieckowski, Ch. 474, Stats. 2012).

¹¹ *See* SB 501 (Wieckowski, Ch. 800, Stats. 2015).

¹² Code Civ. Proc., § 706.050.

¹³ *Id.*, § 706.050(a).

¹⁴ *Id.*, § 706.050(b).

¹⁵ The state minimum wage is currently \$14 per hour for employers with 25 or fewer employees and \$15 per hour for companies with 26 or more employees; in 2023, when this bill would take effect, the state minimum wage will be \$15 per hour for all companies. *See* California Department of Industrial Relations,

- Subtract \$600 from \$1,440 to determine the amount by which the person's weekly disposable earnings are greater than 40 hours at the minimum wage: \$840.
- Determine which is lower: twenty-five percent of the person's total weekly disposable earnings ($\$1,440 \times .25 = 360$) or fifty percent of the person's weekly disposable earnings in excess of 40 hours at the minimum wage ($\$840 \times .5 = \420).
- Because twenty-five percent of the person's total disposable earnings is lower than fifty percent of the person's earnings that exceed 40 hours at the weekly minimum wage, the maximum garnishment amount per week is \$360.
- Thus, instead of bringing home \$1,440 per week, the person would bring home \$1,080 per week and \$360 per week would be transmitted to the creditor.

This bill modifies the disposable earnings limitation by altering the calculation for disposable earnings on a weekly basis and the percentage of weekly disposable earnings that can be withheld. First, the bill makes the maximum garnishment amount the lesser of twenty-five percent of the debtor's total disposable income or ten percent of the disposable income in excess of the calculated hourly wage. Second, the bill modifies the hourly wage calculation to be double what it is now: instead of using 40 hours at the prevailing hourly wage, the formula uses 80 hours at the minimum hourly wage, with the formulas for non-weekly pay periods being modified accordingly. Pursuant to amendments discussed below in Part 4 of this bill, the bill will also allow increases in the garnishment rate in a tiered system based on gross annual income, to reflect the an individual's increased ability to pay as they earn a greater amount above the median income.

Under the bill, the calculation for the same judgment debtor making a net of \$74,480 in annual wages would be:

- Weekly disposable earnings of \$1,440.
- Calculate 80 hours of work at the state minimum wage of \$15 per hour: \$1,200.
- Subtract \$1,200 from \$1,440 to determine the amount by which the person's weekly disposable earnings is greater than 80 hours at the minimum wage: \$240.
- Determine which is lower: twenty-five percent of the person's total weekly disposable earnings ($\$1,440 \times .25 = 360$) or ten percent of the person's weekly disposable earnings in excess of 80 hours at the minimum wage ($\$240 \times .1 = \24).
- Because ten percent of the person's disposable earnings that exceed 80 hours at the minimum wage is lower than twenty-five percent of the person's total disposable earnings, the maximum garnishment per week is \$24.
- Thus, instead of bringing home \$1,440 per week, the person would bring home \$1,416 per week and \$24 per week would be transmitted to the creditor.

There is little debate among the supporters and opponents of the bill over the effect of the bill's change to the formula – no one disagrees about the mathematics. The disagreement lies instead over how to classify those affected, and what “low,” “middle,” and “high” incomes are in California.

According to the United States Department of Housing and Urban Development's (HUD) Unadjusted Area Median Income data for California in 2021, the median household income in California is \$90,100; the metropolitan county median is \$90,600, and the non-metropolitan county median is \$69,700.¹⁶ No county has an area median income lower than \$70,000.¹⁷ Opponents of the bill refer to a different median income: \$62,171, which is the single-earner median for bankruptcy cases filed between November 1, 2020, and March 31, 2020. The same bankruptcy table puts the median income for households of two, three, and four at \$82,418, \$91,605, and \$105,232.¹⁸ Notably, however, the bankruptcy table referred to by opponents is a statewide measure, whereas HUD's area median income data show that median income in many counties is above \$90,000, and even above \$100,000.¹⁹

The cost of housing is also a factor in who counts as low-, medium-, or high-income. HUD's fair market monthly rents for California – calculated as the fortieth percentile of gross rents for regular, standard-quality units in the market – range from \$609-\$2,631 for a one-bedroom unit, \$801-\$3,198 for a two-bedroom unit, and \$1,044-\$4,111 for a three-bedroom unit.²⁰ The cost of buying a house in California rose 19.5 percent between the fourth quarter of 2020 and the fourth quarter of 2021,²¹ and reaching an estimated median price of \$796,570.²² Several of the bill's supporters mention the sharp increases in the cost of housing in California over the last several years.

¹⁶ See California Department of Housing and Community Development, Division of Housing Policy Development, Memo re Revised State Income Limits for 2021 (Dec. 31, 2021), at p. 14, *available at* <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf> (last visited Mar. 30, 2022) (HUD Metro State Income Limits).

¹⁷ See *id.*, pp. 6-14.

¹⁸ Median family income data for bankruptcy cases filed between November 1, 2020, and March 31, 2021, https://www.justice.gov/ust/eo/bapcpa/20201101/bci_data/median_income_table.htm (last visited Mar. 29, 2022).

¹⁹ HUD Metro State Income Limits, *supra*, fn. 16, at pp. 6-14.

²⁰ United States Department of Housing and Urban Development, HUD Fiscal Year 2022 Fair Market Rent Documentation System, FY 2022 California FMR Study, https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022state_summary.odn (last visited Mar. 22, 2022).

²¹ Federal Housing Finance Agency, House Price Index (HPI) Quarterly Report, 2021Q4 & December 2021 (Feb. 22, 2022), *available at* https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/HPI_2021Q4.pdf (last visited Mar. 22, 2022).

²² California Association of Realtors, December 2021 Sales and Price (Jan. 14, 2022), <https://www.car.org/Global/Infographics/2021-12-Sales-and-Price> (last visited Mar. 22, 2022).

Supporters of the bill look at the data above and argue that the bill's changes to the WGL's garnishment formula reflects the current realities of the cost of living in California and who should be exempted from garnishment because of their low income. They note that a person with a gross annual income of \$72,800, and a take-home income of \$58,136, could have \$13,468 of their wages garnished annually, and argue that this is bad policy – that it does too much harm to take over 18 percent of a person's gross income when they are barely at the statewide median.

Opponents of the bill, on the other hand, believe the current law adequately balances the needs of debt collectors with the need to protect low-income persons from being sunk into poverty. Their chart shows that, under current law, a person making \$40,000 will lose 6.7 percent of their wages per year to garnishment, a person making \$50,000 will lose 11 percent of their wages per year to garnishment, a person making \$60,000 will lose 17.5 percent of their wages per year to garnishment, and a person making \$70,000 per year will lose 22.1 percent of their wages to garnishment. They argue that reducing these amounts will allow too many people to walk away from debts, and raise the cost of credit for all consumers.

Two additional factors to consider are the availability of other collection avenues and the possibility of a debtor obtaining a hardship exemption. If a person has meaningful assets – such as money in savings or investment accounts – those assets may also be levied to satisfy a judgment, minus a minimum amount to allow the debtor to maintain the minimum standard of care.²³ If the debtor has significant equity in a home, a creditor can also force a home sale.²⁴ More rarified property, such as jewelry, heirlooms, or works of art, is also subject to levy.²⁵ Thus, to the extent that debtors are sufficiently high income that they are not living paycheck-to-paycheck, there are likely other avenues for collection. The hardship exemption allows a debtor, within 15 or 20 days of receiving a notice of wage garnishment, to go to court to prove that they need a hardship exemption.²⁶ Opponents propose that, in lieu of the changes to the law set forth in the bill, the Legislature could amend the current process by which a judgment debtor can seek a hardship exemption from the court.

3. This bill eliminates the court's authorization to issue a bench warrant when a judgment debtor or third person fails to appear to provide information to aid in the collection of a judgment

Current law provides judgment creditors with the option of requiring a judgment debtor, or a third person believed to be in possession of property belonging to the judgment debtor or to owe the judgment debtor over \$250, to appear before the court or a court-appointed referee and answer questions to aid in the collection of the

²³ Code Civ. Proc., §§ 695.010, 704.220, 704.225.

²⁴ *Id.*, §§ 704.730-704.850.

²⁵ *Id.*, § 704.040.

²⁶ See Code Civ. Proc., pt. 2, tit. 9, div. 4, ch. 4, art. 2, §§ 703.510 et seq.

judgment.²⁷ To obtain an order for the judgment debtor's appearance, the judgment creditor need only apply to the court for such an order, and the court must issue it unless the judgment creditor has made a similar examination of the judgment debtor in the last 120 days.²⁸ For a third person, the judgment creditor must file an ex parte application with the court and provide an affidavit or other evidence establishing, to the satisfaction of the court, that the third person is in possession or control of property in which the judgment debtor has an interest or owes the judgment debtor over \$250.²⁹

In both cases, the court order requiring an appearance must include a statement in 14-point boldface type if printed or in capital letters if typed, informing the subject of the order that if they fail to appear, they may be subject to arrest and punishment for contempt of court, and the court may make an order requiring the person to pay the judgment creditor's reasonable attorney fees incurred in connection with the proceeding.³⁰ In the event that the judgment debtor or third person fails to appear, the court or court-appointed referee may do either of the following:

- Commence contempt proceedings³¹ and, if a warrant is issued, have the person brought to court to answer for their failure to appear and potentially punish the person for contempt; or
- Issue a warrant for the arrest of the person who failed to appear.³²

This bill removes the authorization for the court or court-appointed referee to issue a warrant for the arrest of a person who fails to appear under an order to appear and give information relating to the collection of a judgment, and the corresponding portions of the court order referring to the possible arrest warrant. The bill also specifies that the court is not authorized to issue an arrest warrant under Code of Civil Procedure section 1993, which generally authorizes arrest warrants when a person fails to appear pursuant to a court order.³³ The bill does not affect the court's, or court-appointed referee's, authority to commence contempt proceedings when a judgment debtor or third person fails to appear. Committee staff have not received any opposition to this portion of the bill.

4. Amendments

As discussed above, the author has agreed to amend the bill to modify the wage garnishment formula for earners above the median state income. The increased garnishment tiers begin at a weekly gross income that would equal a \$93,600 annual

²⁷ *Id.*, §§ 708.110, 708.120.

²⁸ *Id.*, § 708.110.

²⁹ *Id.*, § 708.120.

³⁰ *Id.*, §§ 708.110, 708.120.

³¹ *See id.*, §§ 1209-1222 (proceedings for contempt of court), 1993 (authorizing court to issue warrant for person who failed to appear pursuant to court order).

³² *Id.*, §§ 708.140, 708.170.

³³ *Id.*, § 1993.

gross income, and increases again at weekly gross incomes amounting to \$104,000, approximately \$250,000, and approximately \$350,000. The garnishment allowance is predicated on the debtor's gross weekly income to avoid burdening judgment creditors with the obligation of proving the debtor's gross annual income, which may or may not be as straightforward as 52 times the debtor's gross weekly income.

The new tiers for above-median and high earners are as follows:

- Weekly gross wages under \$1,800: no change in the formula as currently in print in the bill.
- Weekly gross wages of \$1,800 to \$2,000: 12 percent of disposable earnings.
- Weekly gross wages of over \$2,000 to \$4,808: 15 percent of disposable earnings.
- Weekly gross wages of \$4,808 to 6,730: 20 percent of disposable earnings.
- Weekly gross wages over \$6,730: 25 percent of disposable earnings.

This graduated system is intended to provide a more precisely tailored garnishment regime that accounts for the differing burdens of wage garnishment on individuals at low, median, high, and very high income levels.

5. Arguments in support

According to the National Consumer Law Center and the Center for Responsible Lending, co-sponsors of the bill:

California is a leader in consumer protections. But the high cost of living in California means that these protections need to be updated periodically, and SB 501 (also spearheaded by Senator Wieckowski), which established the current level of protection, was enacted in 2015. For 2021, the U.S. Department of Housing and Urban Development considers \$72,100 in pre-tax income to be low income for a family of four. That would translate to roughly \$57,616 in net wages for a married earner claiming three allowances. Under current law this earner could have over \$13,000 in wages seized over the course of the year. SB 1477 would protect all of the net wages considered to be low income for a family of four in California. As income increases to higher levels, garnishment phases in...

Passing SB 1477 now will make sure there are seawalls in place for low-income families and communities of color before the tsunami of debt collection comes for them and will keep the most vulnerable California families above water.

According to the California Low-Income Consumer Coalition (CLICC), writing in support:

The pandemic has been good for profit for companies in the business of collecting old debt. Even during the height of the pandemic, debt buyers, who purchase debts that creditors have already written off for pennies on the dollar, were garnishing wages and making record profits. In August 2020, Encore Capital, the largest debt buyer in the nation, “announced that it had doubled its previous record for earnings in a quarter.” These record profits were largely due to the influx of consumer relief in the form of stimulus checks, enhanced unemployment benefits, and halted evictions, foreclosures and student loan payments. Instead of going directly to shoring up low income families and communities of color, as intended, this pandemic relief often resulted in payments to debt buyers, and now, these families will be under renewed debt pressure as relief programs have, or will soon, end.

SB 1477 will level the playing field by allowing a level of garnishment that working families can afford, removing the threat of arrest in debt matters.

5. Arguments in opposition

According to a coalition of financial institutions and debt collection businesses, writing in opposition:

Wage garnishment is the main method most creditors in California utilize to recover on court-ordered judgments, and SB 1477 proposed to rewrite recently updated statutes in a way that would nearly eliminate wage garnishment. *As a result, most judgment debtors will be essentially judgment proof, and there will be a sharp decline in consumers' access to affordable credit...*

In addition to the favorable wage garnishment formula under current law, there are a host of exemptions from garnishment that a debtor can claim. When a court issues a judgment against a debtor, and when a notice of garnishment is sent, a debtor receives multiple notices that he or she can claim exemptions from garnishment.³⁴ The request for exemptions can be based on a debtor's needs for rent or house payments, food and household supplies, medical needs, school tuition, child care expenses, and numerous other expenses.³⁵ Often times, when a debtor files a claim of exemption form, a judgment creditor does not contest it and wage garnishment is stopped immediately after the creditor's review of

³⁴ [Citing forms promulgated by the Judicial Council of California: form WG-003, Employee Instructions form; WG-006, Claim of Exemption form; WG-007, financial statement form, available at <https://www.courts.ca.gov/forms-by-category.htm?filter=WG> (last visited Mar. 29, 2022).]

³⁵ Judicial Council of California, WG-006, Claim of Exemption form & WG-007, Financial Statement form, available at <https://www.courts.ca.gov/forms-by-category.htm?filter=WG> (last visited Mar. 29, 2022).

the claim. If the creditor does contest it, it must be done within a 10-day period, after which a hearing before a judge ensues and the judge evaluates a judgment debtor's request for exemption from wage garnishment.³⁶...

Not only does this legislation target a narrow issue with an exaggerated solution, but this bill would create real, long-term impacts to California consumers. The bulk of academic research over the past several years that has examined the regulation of the collections industry, and collectors' ability to connect with consumers, has revealed that legislation creating barriers to the valid collection of delinquent debt results in a restriction of the flow of affordable credit offered to consumers.

SUPPORT

Center for Responsible Lending (co-sponsor)
East Bay Community Law Center (co-sponsor)
National Consumer Law Center (co-sponsor)
Public Counsel (co-sponsor)
Public Law Center (co-sponsor)
California Low-Income Consumer Coalition
Californians for Economic Justice
Community Legal Services in East Palo Alto,
Consumer Federation of California
Ella Baker Center for Human Rights
Freedom 4 Youth
Greater Sacramento Urban League
Indivisible CA StateStrong
Katharine & George Alexander Community Law Center, Santa Clara University
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Aid at Work
SEIU California
United Way Bay Area

OPPOSITION

California Association of Collectors
California Bankers Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association
Encore Capital Group

³⁶ Code Civ. Proc., § 703.550.

PRA Group

Receivables Management Association International

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1580 (Assembly Judiciary Committee, Ch. 30, Stats. 2021) altered the procedure for a court-ordered examination of a judgment debtor or third person when the entity served is an organization and the organization failed to designate a person to appear, by establishing a default list of persons required to appear in response to such an order.

SB 501 (Wieckowski, Ch. 800, Stats. 2015) reduced the maximum amount of a judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order to the lesser of twenty-five percent of the individual's weekly disposable earnings or fifty of the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage, or applicable local minimum hourly wage, if higher.

AB 1775 (Wieckowski, Ch. 474, Stats. 2012) codified in California law the definition under the federal Consumer Credit Protection Act for "disposable earnings" and the maximum amount of weekly wage garnishment of 25 percent of the individual's disposable earnings. AB 1775 also capped the weekly wage garnishment amount at 40 times the state minimum hourly wage and provided certain multipliers to determine a maximum amount subject to levy for pay periods other than weekly.

AB 1388 (Wieckowski, Ch. 694, Stats. 2011) deleted the exception from the wage garnishment exemption for common necessities of life and instead provided an exception for wages necessary for the support of the judgment debtor and his or her family. AB 1388 also added the exception for debt incurred pursuant to an order or award for the payment of attorney's fees under specified sections of the Family Code.
